

STATE OF HAWAII  
DEPARTMENT OF LAND AND NATURAL RESOURCES  
Land Division  
Honolulu, Hawaii 96813

February 9, 2007

Board of Land and Natural Resources  
State of Hawaii  
Honolulu, Hawaii

PSF No: 07od-012

KAUAI

Amend Prior Board Action of June 12, 1992, Item F-14,  
Authorization to Withdraw Land from the Operation of General  
Lease No. S-4413 and Right-of-Entry to the Department of  
Transportation, Highways Division for Contra-Flow Road  
Purposes, Wailua, Kawaihau, Lihue (Puna), Kauai; Tax Map  
Key: (4) 3-9-006:001 (por) and 012

BACKGROUND:

In 1992, the Department of Transportation, Highways Division (DOT) requested the use of the subject lands, namely, Parcel 9 (0.458 acre), TMK (4) 3-9-6:12, and Parcel 10 (0.33 acre), TMK (4) 3-9-6:portion of 1 for contra-flow road purposes during peak hours until the completion of Kapaa By-Pass Road, which was expected to take approximately ten years.

The subject lands were encumbered by Governor's Executive Order (EO) No. 2429 to the Division of State Parks (State Parks) and General Lease (GL) No. S-4413 to Lihue Plantation Company, Limited (Lessee). State Parks had no objections to the use proposed by DOT, and the Lessee agreed to the same request provided the rental under GL 4431 was reduced accordingly.

On June 12, 1992, under agenda item F-14, the Board authorized the subject request. A copy of the approved submittal is attached as Exhibit A. The approved right-of-entry (ROE) was to start from the date the subject area was withdrawn from GL 4413 and continue until the planned by-pass road was completed.

The document relating to the withdrawal of Parcels 9 & 10 was executed between the State and the Lessee on May 27, 1994.

Today's request is to amend the Board's prior action by authorizing a set aside of the subject lands, and extending the ROE until the requested EO is issued. A copy of the tax map is attached as Exhibit B for reference.

REMARKS:

Due to the changes in the traffic situation on Kauai and the need to improve the area, DOT requests setting aside the yellow and yellow-

hatched red areas as shown on Exhibit C which consists of Parcels 9 & 10 mentioned above and some additional area, for a total of 1.841 acres ("subject area").

A portion of the subject area, (red-hatched yellow area shown on Exhibit C and identified by tax map key (4) 3-9-006:029 portion), is now encumbered by EO 3703, a set aside to State Parks for Wailua River State Park. DOT has discussed with State Parks and obtained State Parks' verbal agreement to the request. An EO withdrawing the red-hatched yellow area from EO 3703 is necessary before the set aside of the same area to DOT can proceed.

To facilitate the construction, DOT requests a ROE to some State lands, as outlined in blue on Exhibit C, for construction staging areas (blue areas). The blue areas are either under the jurisdiction of State Parks under EO 3703 or under Land Division. This ROE shall be scheduled to expire upon the completion of the construction.

Funding for the construction project is authorized by Act 160 SLH 2006, Item C-130. Invitation for bids and notice to proceed for the project are scheduled for August 2007 and February 2008 respectively. The construction will last approximately 30 months.

DOT will submit the legal description and survey map, and process any subdivision requirement (if necessary) for the subject request.

Further, pending the issuance of the requested EO, DOT requests an immediate ROE for the subject area. A copy of DOT's request is attached as Exhibit D.

Staff recommends the Board include language in the EO requiring DOT to repair and maintain all pre-existing and future infrastructure constructed on or servicing the subject area.

In view of DOT's current request, staff recommends the Board amend its prior action by:

- 1) Adding authorization for withdrawing red-hatched yellow area, the exact area to be determined by the Department of Accounting and General Services, Survey Division, from EO 3703;
- 2) Adding authorization to set aside the subject area to DOT for highway and related purposes;
- 3) Extending the term of the ROE for the subject area to expire three (3) years from today's Board meeting, or the issuance of the EO, whichever is earlier.
- 4) Granting an immediate construction ROE to DOT for the blue areas for a construction staging area, and the subject ROE to expire upon completion of construction.

RECOMMENDATION: That the Board:

1. Amend its prior Board action of June 12, 1992, under agenda item F-14 by adding the following Sections C, D and E to the

Recommendation Section:

- C. Approve of and recommend to the Governor the issuance of an Executive Order withdrawing the red-hatched yellow area mentioned in the "Remarks" section above from Governor's Executive Order No. 3703, subject to:
1. The standard terms and conditions of the most current executive order form, as may be amended from time to time;
  2. Disapproval by the Legislature by two-thirds vote of either the House of Representatives or the Senate or by a majority vote by both in any regular or special session next following the date of the setting aside;
  3. Review and approval by the Department of the Attorney General; and
  4. Such other terms and conditions as may be prescribed by the Chairperson to best serve the interests of the State.
- D. Approve of and recommend to the Governor the issuance of an Executive Order setting aside the subject area to Department of Transportation, Highways Division, under the terms and conditions cited above, which are by this reference incorporated herein and subject further to the following:
1. The standard terms and conditions of the most current executive order form, as may be amended from time to time;
  2. The Department of Transportation, Highways Division (DOT) shall repair and maintain all pre-existing and future infrastructure improvements constructed on or servicing the subject area. If any portion of the subject area is ever returned to the Department of Land and Natural Resources ("DLNR") (upon any withdrawal or cancellation of this Executive Order), then at the request of DLNR, DOT shall remove all such pre-existing and future infrastructure improvements hereafter constructed, or alternatively, shall remain responsible for repair and maintenance of all such pre-existing and future infrastructure improvements, hereafter constructed, to perpetuity.
  3. Disapproval by the Legislature by two-thirds vote of either the House of Representatives or the Senate or by a majority vote by both in any

regular or special session next following the date of the set aside;

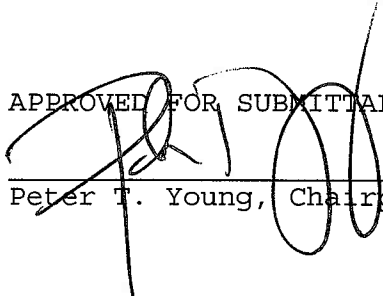
4. Review and approval by the Department of the Attorney General; and
  5. Such other terms and conditions as may be prescribed by the Chairperson to best serve the interests of the State.
- E. Authorize the issuance of a right-of-entry for the blue areas shown on Exhibit C to Department of Transportation for Kuhio Highway Short Term Improvements, Wailua Cane Haul Bridge Widening Project, under the terms and conditions cited above, which are by this reference incorporated herein and subject further to the following:
1. The standard terms and conditions of the most current right-of-entry form, as may be amended from time to time;
  2. Written concurrence by the Division of State Parks; and
  3. Such other terms and conditions as may be prescribed by the Chairperson to best serve the interests of the State."
2. Amend its prior Board action of June 12, 1992, under agenda item F-14 by replacing Section B.6 with the following:
- "6. This right-of-entry shall be effective from the date the subject area is withdrawn from General Lease No. S-4413 and continue until February 8, 2010, or the issuance of the Governor's Executive Order mentioned in Section D of the Recommendation Section, whichever is the earlier."
3. All other terms and conditions listed in its approval dated June 12, 1992, agenda item F-14, to remain the same.

Respectfully Submitted,

*Barry Cheung*

Barry Cheung  
Land Agent

APPROVED FOR SUBMITTAL:

*my*   
Peter T. Young, Chairperson

JOHN WAIHEE  
GOVERNOR OF HAWAII



STATE OF HAWAII  
DEPARTMENT OF LAND AND NATURAL RESOURCES  
DIVISION OF LAND MANAGEMENT  
P. O. BOX 821  
HONOLULU, HAWAII 96809

AQUACULTURE DEVELOPMENT  
PROGRAM  
AQUATIC RESOURCES  
CONSERVATION AND  
ENVIRONMENTAL AFFAIRS  
CONSERVATION AND  
RESOURCES ENFORCEMENT  
CONVEYANCES  
FORESTRY AND WILDLIFE  
LAND MANAGEMENT  
STATE PARKS  
WATER AND LAND DEVELOPMENT

June 12, 1992

Board of Land and Natural Resources  
State of Hawaii  
Honolulu, Hawaii 96813

KAUAI

Subject: Authorization to Withdraw Land from the Operation of General Lease No. S-4413 and Right-of-Entry to the Department of Transportation, Highways Division for Contra-Flow Road Purposes, Wailua, Kawaihau, Lihue (Puna), Kauai, Tax Map Key: 3-9-06:1(Por.) and 12

STATUTE:

Chapter 171, Hawaii Revised Statutes, as amended.

APPLICANT:

DEPARTMENT OF TRANSPORTATION, HIGHWAYS DIVISION

FOR:

Portion of the Government (Crown) Land of Wailua, also being Cane Haul Road Right-of-Way Part 9 and Part 10 (Revised March 1961), Wailua, Lihue (Puna), Kauai, Tax Map Key: 3-9-06:1(Por) and 12 as shown outlined in red on map labeled Land Board Exhibit A, appended to the basic file.

PURPOSE:

Vehicular contra-flow traffic lane

LAND TITLE STATUS:

Subsection 5(b) lands, Admissions Act

AREA:

0.788 acres, subject to confirmation by the State Land Surveyor.

STATUS:

Encumbered by Governor's Executive Order No. 2429 to the Division of State Parks and by General Lease No. S-4413 to the Lihue Plantation Company, Limited.

approved as amended. Amendment:

1. DOT shall obtain subdivision approval from the County of Kauai for the withdrawal area and, submit to DLNR the aforesaid approval together with survey parcel map and description of said area.
2. Under RECOMMENDATION B.B. add: -- "if required by DLNR, the DOT shall demolish the Wailua River Cane haul bridge."

ITEM F-14

EXHIBIT "A"

Board of Land and Natural Resources  
State of Hawaii  
Honolulu, Hawaii 96813  
June 12, 1992

KAUAI

ZONING:

State Land Use Commission - Urban  
County of Kauai CZO - Open

ENVIRONMENTAL IMPACT STATEMENT:

The subject disposition is exempt from the provision of Chapter 343, Hawaii Revised Statutes, as amended because it represents no change beyond that previously existing.

REMARKS:

The Department of Transportation, Highways Division has requested use of the subject area for a vehicular contra-flow lane during peak traffic hours until completion of the Kapaa By-Pass Road, which is expected to take approximately 10 years.

The Lihue Plantation Company, Limited has no objections to the proposed withdrawal from General Lease No. S-4413, provided, that the annual lease rental amount is reduced to reflect the portion of land withdrawn.

Also, the Division of State Parks has no objections to the proposed use by the Department of Transportation, Highways Division.

RECOMMENDATION: That the Board:

- A. Authorize the withdrawal of 0.788 acres from the operation of General Lease No. S-4413, subject to a proportionate reduction in the annual lease rental.

Subsequent to the above withdrawal,

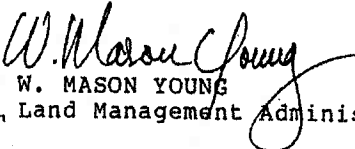
- B. Grant a right-of-entry to the Department of Transportation, Highways Division to the subject property for vehicular contra-flow traffic lane purposes, subject to the following conditions:
1. The Department of Transportation, Highways Division, its contractor and/or its agent shall indemnify, defend and hold the State of Hawaii harmless for any loss, liability, claims or demand for property loss or personal loss or personal injury or death cause by or resulting from any act or omission of the contractor and/or agent in connection with the right granted herein;
  2. Applicable requirements of the federal, state and county governments shall be complied with and satisfied;
  3. The Department of Transportation, Highways Division shall provide the Department of Land and Natural Resources, Division of Land Management a site plan showing all design modifications to the old railroad bridge across the Wailua River and its approach roads. Said modifications are subject to the Chairperson's approval;

Board of Land and Natural Resources  
State of Hawaii  
Honolulu, Hawaii 96813  
June 12, 1992

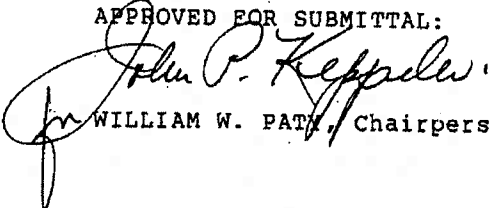
KAUAI

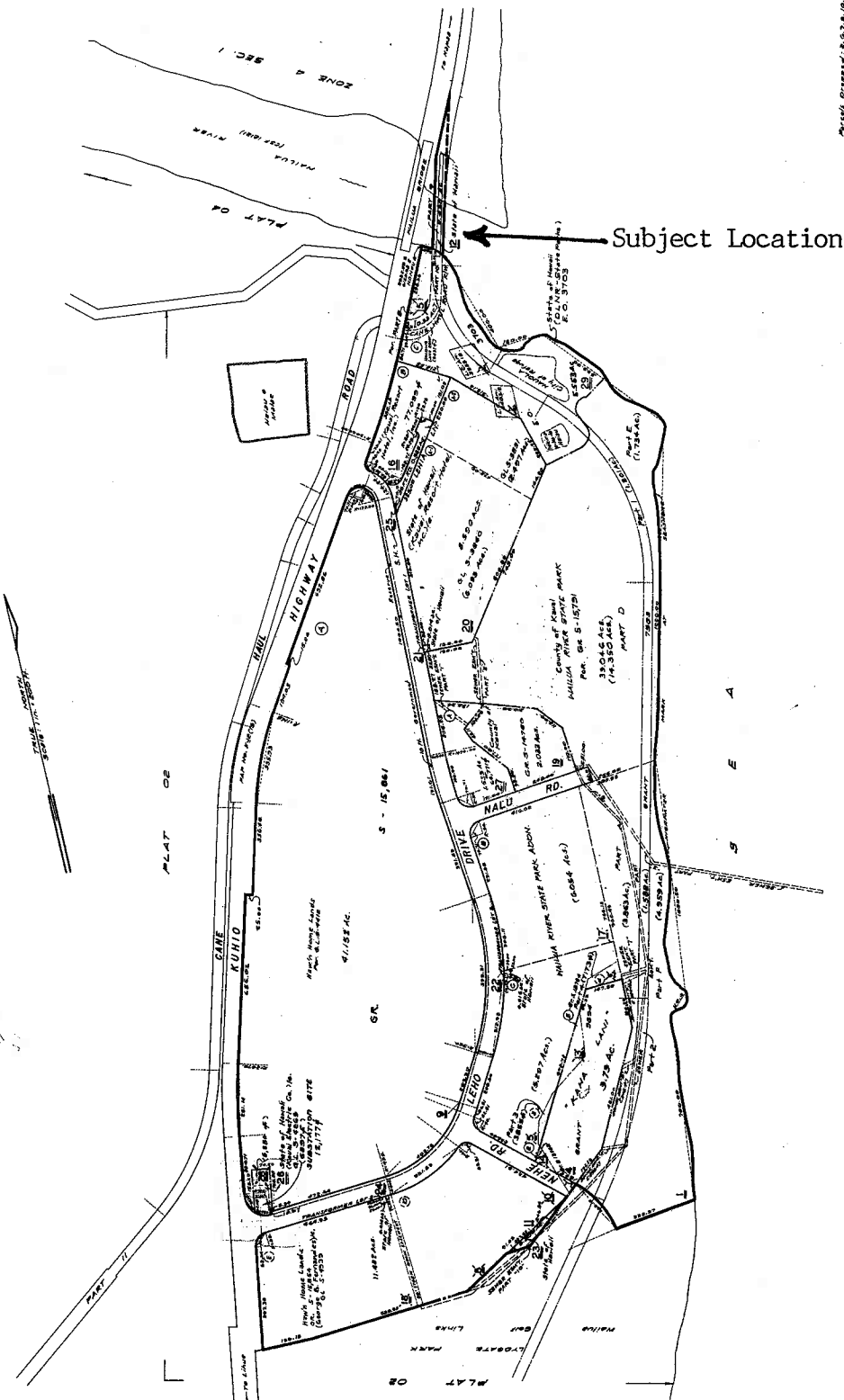
4. In the event burial sites, archeological or historical sites or artifacts are uncovered during the course of construction, work shall cease immediately and the Historic Preservation Office contacted in Honolulu;
5. Upon completion of any modifications, the hours of use as a vehicular contra-flow traffic lane by the Department of Transportation, Highways Division shall be from 6:00 a.m. to 8:00 a.m. and 3:30 p.m. to 5:30 p.m., Monday through Friday. Any changes to the above hours of operation of the subject road as a vehicular contra-flow traffic lane shall require the Chairperson's approval;
6. This right-of-entry shall be effective from the date the subject area is withdrawn from General Lease No. S-4413 and continue until the planned by-pass road is completed;
7. During the effective period of the right-of-entry, the Department of Transportation, Highways Division shall maintain the bridge across the Wailua River and its approach roads from Kuhio Highway in a condition that will effectuate the safe public passage of vehicular traffic;
8. Upon the expiration or cancellation of this right-of-entry, and/or abandonment of the premises for vehicular contra-flow traffic lane purposes, the Department of Transportation shall restore the premises to a condition acceptable to the Department of Land and Natural Resources;
9. Such other conditions as may be prescribed by the Chairperson.

Respectfully submitted,

  
W. MASON YOUNG  
Land Management Administrator

APPROVED FOR SUBMITTAL:

  
WILLIAM W. PATE, Chairperson



Subject Location

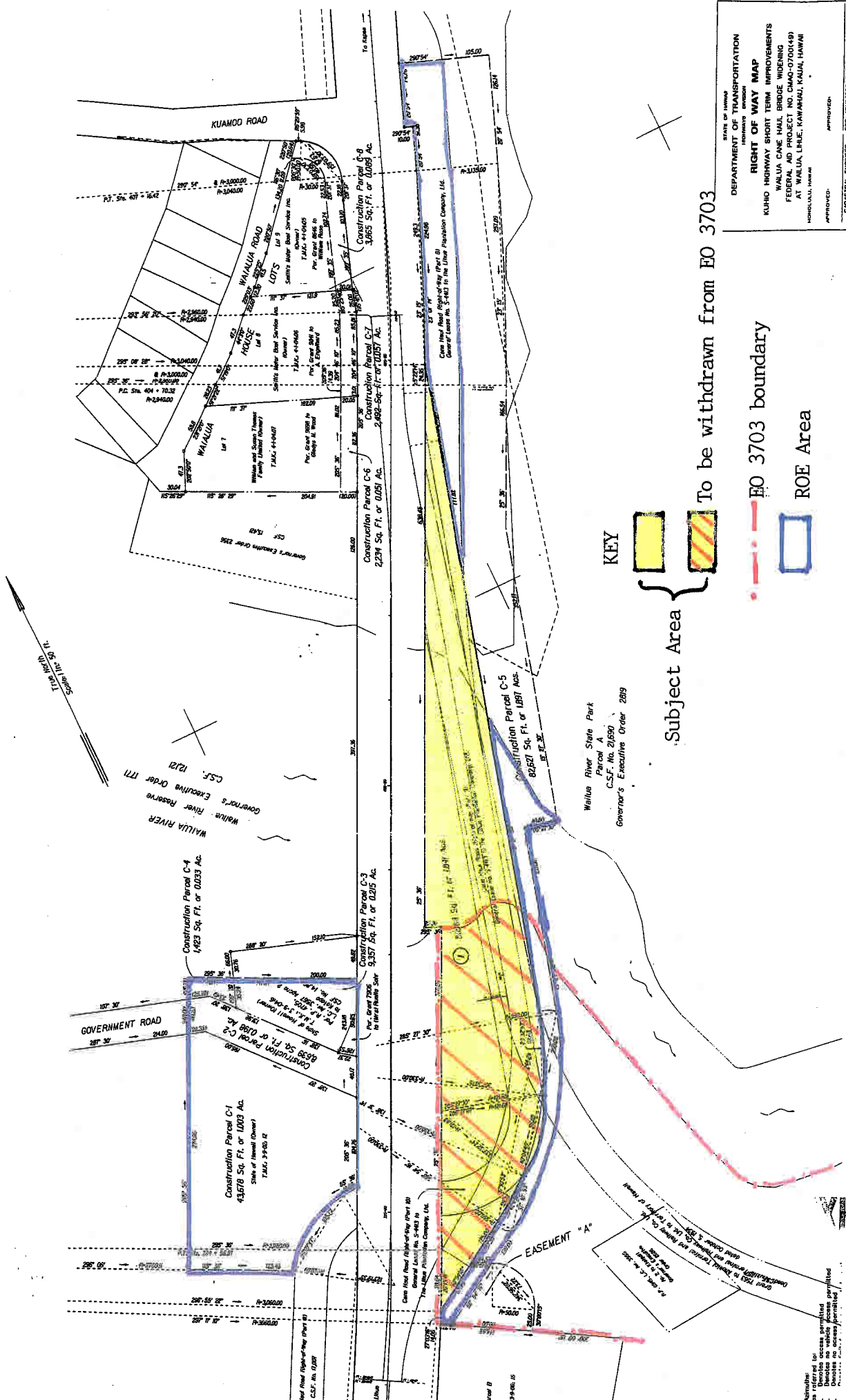
DEPARTMENT OF TAXATION  
TAXATION MAPS BUREAU  
TAX MAP  
FOURTH TACETER DIVISION  
ZONE 4 SEC. 1 PLAT 1  
3 9 06  
SCALE 1 IN. = 250 FT.

FOR REAL PROPERTY TAXATION PURPOSES  
SUBJECT TO CHANGE

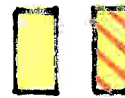
WALLUA RESORT SITE, WALLUA, LIHUE, KAUAI (form doc 3-9-02)

EXHIBIT "B"





KEY



Subject Area

To be withdrawn from EO 3703

EO 3703 boundary

ROE Area



STATE OF HAWAII  
DEPARTMENT OF TRANSPORTATION  
HIGHWAYS DIVISION  
**RIGHT OF WAY MAP**  
KUHO HIGHWAY SHORT TERM IMPROVEMENTS  
WALUA CANE HALL BRIDGE WIDENING  
FEDERAL AID PROJECT NO. CHAQ-0700(49)  
AT WALUA LAKE, KAWAHAI, KAUAI, HAWAII  
APPROVED: \_\_\_\_\_  
CHIEF ENGINEER, HIGHWAYS DIVISION

EXHIBIT "C"

Notwithstanding to whom title may be transferred, the State of Hawaii shall retain the right to use the easement for the purpose for which it was granted. No other use shall be permitted without the express written consent of the State of Hawaii.

LINDA LINGLE  
GOVERNOR



BARRY FUKUNAGA  
INTERIM DIRECTOR  
  
DEPUTY DIRECTORS  
FRANCIS PAUL KEENO  
BRENNON T. MORIOKA  
BRIAN H. SEKIGUCHI

HIGHWAY DESIGN BRANCH, ROOM 688A  
BRIDGE DESIGN SECTION, ROOM 611  
CADASTRAL DESIGN SECTION, ROOM 600  
HIGHWAY DESIGN SECTION, ROOM 609  
HYDRAULIC DESIGN SECTION, ROOM 636  
TECHNICAL DESIGN SERVICE, ROOM 688

RIGHT-OF-WAY BRANCH, ROOM 691

TRAFFIC BRANCH, ROOM 602

MOTOR VEHICLE SAFETY OFFICE, ROOM 511

STATE OF HAWAII  
DEPARTMENT OF TRANSPORTATION  
HIGHWAYS DIVISION AT KAPOLEI  
601 KAMOKILA BOULEVARD, ROOM 691  
KAPOLEI, HAWAII 96707

IN REPLY REFER TO:  
HWY-R  
3.84597

January 23, 2007

TO: RUSSELL TSUJI, ADMINISTRATOR  
DEPARTMENT OF LAND AND NATURAL RESOURCES-  
LAND DIVISION

FROM: DEAN K. YOGI *[Signature]*  
RIGHT-OF-WAY MANAGER

SUBJECT: KUHIO HIGHWAY SHORT TERM IMPROVEMENTS, WAILUA CANE  
HAUL BRIDGE WIDENING, TMK: (4) 3-9-06: POR. 1 AND 12,  
PROJECT NO. CMAQ-0700(49) AT WAILUA, LIHUE, KAWAIHAU, KAUAI,  
HAWAII

RECEIVED  
LAND DIVISION  
2007 JAN 25 P 3:06

We request to amend a prior Board of Land and Natural Resources (BLNR) action dated June 12, 1992, authorizing withdrawal of lands from the operations of General Lease No. S-4413 and grant a Right-of-Entry to the Department of Transportation, Highways Division (DOT), for Contra-Flow Road Purposes. Due to changes in the traffic situation on Kauai and the need to improve the area, we request a formal withdrawal and set aside of Parcel 1 to DOT, by issuance of Governor's Executive Order, as shown on attached map, having an approximate area of 1.841 acres, and more particularly identified as being a portion of Tax Map Key No. (4) 3-9-06.

A copy of the final Right-of-Way Map will be forwarded to you upon completion, including metes and bounds description of the parcel. During the interim, pending issuance of the requested GEO, we request BLNR grant DOT immediate Right-of-Entry and possession of Parcel 1 in order that construction of the project can proceed without delay. If our request meets with your approval, please sign, date and return to us the Consent portion of the duplicate copy of this Memorandum within forty-five (45) days of the date of this letter.

Funding for the construction of the project is authorized by Act 160 SLH 2006, Item C-130.

A Final Environmental Assessment and Finding of No Significant Impact (FEA/FONSI) is currently being completed for this project.

EXHIBIT "D"

Russell Tsuji, Administrator  
Page 2  
January 23, 2007

HWY-R  
3.84597

Estimated scheduling for the construction of the project is as follows:

Ready to Advertise: August 2007  
Bid Opening: September 2007  
Notice to Proceed: February 2008  
Duration of Construction: Approximately 30 months

We request your expeditious efforts in approving our request. Thank you for your cooperation and attention to this request.

If there are any questions, please call me at 692-7325.

2 Enclosures

1. Preliminary Right-of-Way Map
2. Duplicate Copy of this Memorandum

c. ✓ DLNR - Kauai (Tommy Oi) w/ enclosure #1